Petition

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NO. 81-1519

IN THE

Supreme Court of the United States

OCTOBER TERM 1981

TONY DARWIN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

TONY DARWIN
"Pro Se"

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QUESTIONS PRESENTED FOR REVIEW

1.

Whether the restrictions and conditions inflicted upon the petitioner before and during trial raised to the Judicial standard that deprived the petitioner of various Constitutional Rights.

2A.

Did the actions of the Goverment constitute an impermissible interference with the petitioners right to counsel.

2B.

Did the trial court err in failing to grant a continuance to petitioner's trial attorney, so that the petitioner could properly prepare his case with his attorney.

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NO. _____

IN THE

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TONY DARWIN,
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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI TO
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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Tony darwin, respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Eleventh Circuit, filed December 14, 1981.

JURISDICTION

The date of the opinion of the Court of Appeals of the Eleventh Circuit sought to be reviewed is December 14, 1981, it was filed on December 15, 1981.

Jurisdiction of this Court is invoked under 28 U.S.C. #1254(1)

STATEMENT OF FACTS

The petitioner was charged by indictment with violation of 18 U.S.C., Section 3150; namely Bond Jumping. The petitioner was arrested on June 10th, 1980, at 105 Nawiliwili St. in Honolulu, Hawaii, by D.E.A. agent George Y. Clemente. (T.T.-107, et. seq.).

The genesis of the bond jumping charge, in Savannah, Georgia, concerned an appellate bond in the amount of Twenty-five ($25,000.00) Dollars in an earlier Federal case on which the Prtitioner had been convicted. Subsequent to and during the time while the Petitioner was at liberty on appeal bond, Petitioner had

appealed to the F.A.A. in the Tampa area for licensure, concerning his pilot's license. One Manny Funes, of the Florida Department of Criminal Law Enforcement, in Tampa, Florida, checked the Petitioners application and felt that the petitioners application contained a false statement to the F.A.A. Mr. Funes then brought this to the attention of the Federal Authorities, who indicited the Petitioner in Tampa, Florida, under 18 U.S.C. Section 1001 for False Swearing. (T.T.-84 et. seq.). Thereafter, Mr. Funes also brought the Tampa violation to the attention of the U.S. Attorney's office in Savannah, Georgia. The Justice Dept., then prevailed upon the Federal Court in Savannah, Georgia, to issue an order to the U.S. Marshall, Middle District of Florida, Tampa Division, to take the Petitioner into custody, and to transport him to the Southern District of Georgia, to show cause, if any he can, why his bond should not be revoked. In the course of the trial, there is evidence that on at least three (3) prior occasions, Manny Funes, had

made what the Petitioner felt to be, threats to his physical well-being, as well as to Petitioners wife, it was this fear that the petitioner preceived from Fines, coupled with the Court Order from Savannah, mandating that he surrender at Tampa, Florida, regarding his possible bond revocation, that mandated that the Petitioner stay clear of Mr. Funes, in the Tampa area. (T.T. 143 et. seq.). Also, evidence was adduced at trial, through one of Petitioners other counsel, John Marks, Esq., that the Petitioner tried to surrender himself in Savannah through his counsel. (T.T. 128 et. seq.). The chief stumbling block to surrender in Savannah, being refusal of the United States to vouchsafe his safety. (T.T. 128 et. seq.). and (T.T. 143 et. seq.).

Against this backdrop, several other most prejudicial factors occured. The Petitioner was incarcerated in the Chatham County Jail prior to trial. (T.T. 143, et. seq.). During

that period of incarceration, the records of the petitioner, Tony Darwin, indicate that he lost approximately twenty-six (26) pounds, the totality of circumstances of confinement within Chatham County Jail and the subhuman level of existance imposed there violates all civilized concepts of human rights. The primative, punitive, and inhumane conditions violates Petitioners rights under First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution. These facilities are more than vaguely reminiscent of Andersonville, during the Civil War and cannot be masked by a new jail facility.* The importance of this factor evidently got all but lost in these proceedings. Contemporaneous to the Petitioner having been arrested in Hawaii, an indictment issued out of the

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*This is the subject of a Habeas Corpus and other Federal relief in Savannah. Also, interestingly enough other prisoners, such as Robert L Herring (U.S. v. Herring) have lost up to forty-five (45) pounds while being incarcerated in the same jail in Chatham County.

Southern District of Florida, in Miami, Florida, regarding the Coptics, and there alleged smuggling in Florida. Petitioners counsel, Arther Tifford, promptly moved for a continuance of the Savannah case, so that he could have the Petitioner available in Miami, to formulate the Coptic case defence, with the Petitioner. This motion was denied. At the same time Mr. Tifford was constantly in trial in Miami. In spite of these motions, Petitioner was transported to Savannah, Georgia, poste haste, to be tried on a far less important case, in spite of the fact that a multi-count indictment was then pending in Miami against the Petitioner. As a practical affect, this ment that the Appellant, was deprived of the counsel of his choice for the Savannah case, namely Arther Tifford, due to the distance between Miami and Savannah, Georgia. Mr. Darwin, on only one Memorable occasion, was able to communicate, telephonically, with Mr. Tifford to formulate the

defense for the Savannah bond jumping case. Interestingly enough, Mr. Tifford also commented in his motion for continuance, supra, that Mr. Darwin's transportation to Savannah, took place immediately after plea negotiations between the United States and Mr. Darwin's counsel had failed, relative to the Coptic's case, in Miami.

ARGUMENT 1

WHETHER THE RESTRICTIONS AND CONDITIONS INFLICTED UPON THE PETITIONER BEFORE AND DURING TRIAL RAISED TO THE JUDICIAL STANDARD THAT DEPRIVED THE PETITIONER OF VARIOUS CONSTITUTIONAL RIGHTS.

The totality of conditions that exist within Chatham County Jail and the subhuman level of existance imposed there violates all civilized concepts of human rights and can be described as nothing less than shocking to the conscience, and, as this discourse is expound-

ed, it will become readily cognizable as to the profuse number of Constitutional Deprivations that were gratuitiously inflicted upon the petitioner.

At 8:30 AM October 31, 1980 Petitioner was surreptitiously removed from F.C.I., Miami, Florida and transported to Chatham County Jail, Savannah, Georgia, without the first scintilla of legalwork or property which is in direct violation of Bureau of Prisons, Policy atatements, 5500.1, page 3-11, and, 5232.2, page 1-2.

Upon arrival petitioner was put in a temporary holding cell where the conditions could be discribed as nothing less than barbaric, the cell contained a lavatory that was broken off at the floor level and every time that a lavatory was operated in an enjoining cell it created an overflow condition which coupled with the stench made for inhumane conditions, Hutchings v. Corum 501 F.Supp. 1276, the insect population was so prolific that it created havoc with the living conditions and coupled

with the lack of toothpaste, soap, pencils, paper, stamps, radio, towels, toiletpaper, or any of life's necessities constituted a violation of petitioners 8th Amendment rights.

One week later petitioner was moved to a 8 man cell and instead of conditions ameliorating they deteriorated even further.

For the first three weeks petitioner made approximately 40 requests for legal material and a call to his attorney, petitioner was never givin any legal material and indeed was told quite bluntly that if he persisted in his efforts that he, "WOULD NOT BE ABLE TO USE IT ANYHOW," in a very threatening manner. All of which is in violation of petitioners right of access to the courts. Ex parte Hull, 312 US 546 (1941).

In Bounds v. Smith,430 US 817, 52 L.Ed2d 72, 97 S.Ct. 1491 (1977), the Supreme Court took an affirmative view toward the responsibility of prison authorities to provide prisoners with adequate law libraries or some

other viable source of legal knowledge. The Court did not mandate the use of law libraries if a sufficant alternative program for legal assistance is in operation. In the instant case there was neither a law library or any type of legal program of assistance. Wolff v. McDonnell, 418 US 539, 41 L.Ed2d 935, 94 S.Ct. 2963, The Court stated that a prisoner retains his Constitutional Rights of access to the courts. In Cruz v. Hauck 404 US 59, 30 L.Ed2d 217, 92 S.Ct. 313, the Court vacated and remanded for reconsideration in light of Gilmore a decision that legal material need not be furnished to county jail inmates.

The case of Gilmore v. Lynch, 319 F.Supp. 105 (N.D. Cal. 1970); aff'd, 404 U.S. 15 (1971) that was decided by a three judge panel in California and subsequently affirmed by the United States Supreme Court. The district court stated that access to the courts is a right which encompasses "all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges

brought against him or grievances alleged by him." In affirming, the Supreme Court, citing Johnson v. Avery, approved the invalidation of a regulation which had established, as a standard for prison libraries, a highly restrictive list of law books. The decision has set a new precedent by asserting that prison officials have a duty to take an affirmative action in assuring inmates the right of access to the courts. The state must make available, notwithstanding economic difficulties, sufficient legal materials to assure that the prisoner is able to file petitions which contain at least some legal proficiency, also, in Morales v. Schmidt, 340 F.Supp. 544, 548 (W.D. Wis. 1972) Judge Doyle recognized that access by inmates "to a certain minimum of legal books and materials" was a constitutionaly protected right. Bounds v. Smith, 21 Cr.L. 3017 (U.S. S.Ct. 1977).

It is unpersuasive to say that because the Petitioner had an attorney he was not entitled to legal research materials as the petitioner

has always worked in conjunction with his attorneys and done the vast amount of research that is required to properly promulgate a litigation, also, at the time of the abovestated incidents there was an excellant chance that petitioner would either have to represent himself or have counsel appointed, both of which were repugnant, due to the abovementioned restrictive actions of various officials. Younger v. Gilmore, 404 US 15, 30 L.Ed2d 142, 92 S.Ct. 250 (1971); Leeds v. Watson, 630 F.2d 674 (1980); Adams v. Carlson, 488 F.2d 619; Bureau of Prisons Policy Statements 7338.1 - 1.6.1.

Dur ing this period of confinment petitioner lost twenty-six (26) pounds due to the subhuman conditions that existed there, such as: extremes of temperature, that necessitated the wearing of one's bedblanket; unpalatable, uncooked, cold food that often had insects, fingernails, hair, and other various sundry items, which was rationed out in meager quantities; the shower was continually cold and was a breeding

place for a profuse number of insects; the one lavatory was clogged on numerous occasions and the odorous that emanated were so putrid that it was impossible to breath without gagging; overcrowding was normal which bred a despotic atmosphere; the medical facilities consisted of a paramedic that passed out pills, totally oblivious to serious medical needs; finally, during this period of incarceration the petitioner was NEVER allowed out of his cell for any type of physical exercise, although the facility was readily available, all of the abovementioned is in violation of petitioners Eighth Amendment Right to be free from cruel and unusual punishment.

Bell v. Wolfish, 441 US 520, 60 L.Ed2d 447, 99 S.Ct. 1861, In order to imprison a person prior to trial, the Goverment must comply with the Federal Constitution and any applicable statutory provisions. The Goverment may subject him to the restrictions and conditions of the detention facility so long as the conditions and restrictions do not amount to punishment,

or otherwise violate the Federal Constitution. Smith v. Sullivan 611 F2d 1039 (1980); Rhem v. Malcom, 389 F.Supp. 964, amended 396 F.Supp. 1195, affirmed 527 F2d 1041; Sweet v. South Carolina Dept. of Corrections, 529 F2d 854; Ramos v. Lann 485 F.Supp. 122, 639 F2d 559, certiorari denied 101 S.Ct. 1759, (1979); Costello v. Wainwright 397 F.Supp. 20 (M.D. Fla. 1975); Mitchell v. Untreiner 421 F.Supp. 886 (Fla. 1976); Burks v. Teasdale 492 F.Supp. 650 (1980); O'Bryan v. Saginaw County, Michigan, 437 F.Supp. 582; James v. Wallace, 406 F.Supp. 318 (M.D.Ala. 1976); Brenneman v. Madigan 343 F.Supp. 128; United Nations Standard Rules for thr Treatment of Prisoners, 10(A), 12, 13, 14, 15, 20, 21, 22(2), 24, 35, 36(1)(2)(3)(4), 41, 62, 78; Bureau of prisons Policy Statments 7338.1, page6, 2.3.

ARGUMENT 2A

DID THE ACTIONS OF THE GOVERMENT CONSTITUTE AN IMPERMISSIBLE INTERFERENCE WITH THE PETITIONERS RIGHT TO COUNSEL.

ARGUMENT 2B

DID THE TRIAL COURT ERR IN FAILING TO GRANT A CONTINUANCE TO PETITIONER'S TRIAL ATTORNEY, SO THAT THE PETITIONER COULD PROPERLY PREPARE HIS CASE WITH HIS ATTORNEY.

It is to be noted that Petitioners attempts at confering with counsel were continually frustrated despite the manifold requests that were made, both in writing and verbally, these events culminated on December 1, 1980 when Petitioner informed Judge Avant B. Edenfield that he was being frustrated in his efforts at contacting his counsel, Mr. Arther Tifford, Petitioner was informed at this time that if counsel could'nt be present for trial that somebody would be, "taken from the street."

On December 5, 1980, 10 days before trial,

the situation had deteriorated to the point that the petitioner was taken from the jail to the Marshals Office solely so that he could establish contact with his attorney. At this time Petitioner contacted Mr. Tiffords secretary who informed the Petitioner that counsel had been having extreme difficulties getting in contact with the Petitioner due to the failure of communications at the jail, counsels secretary assured the Petitioner that she would pass the message on to counsel.

On December 11, 1980, petitioner was givin a 25 minute telephone call to his counsel on the direct order of the court, during the ensueing conversation it became abundantly clear that counsel had been impermissively obstructed in his efforts at contacting his client due to the blockage of calls by jail personal, also, in the instant conversation it was obvious that the call was being monitored as both the petitioner and counsel could readily discern conversations in the background, which had a very chilling effect

on the total context of the conversation.

It is to be noted that from the time the petitioner was arraigned in Savannah, Georgia, up to and including the day that his trial started on December 15, 1980, approximately only thirty-eight (38) days had elapsed. (E - 45). The petitioners trial attorney, Arther Tifford, Esq., was constantly involved in trial in Miami and beginning with the time of the Petitioners arraignment, in Savannah, Georgia, on November 7, 1980, the petitioner was allowed one phone call to his attorney in Miami. Due to the unavailability of the petitioner to his attorney, the petitioner was denied the oppertunity to fully formulate such defenses as duress-necessity and insanity that had been proffered by Mr. Tifford.

It cannot be gainsaid that the petitioner did not have the right to the attorney of his choice to handle his Federal Case in Savannah, Georgia. United States v. Bergamo, 154 Fed. 2d 31 (3rd Cir. 1946); Chandler v. Fretag, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 4? (1954);

NCK Org'n Ltd. v. Bregman, 542 F.2d 128, 135 (2nd Cir. 1976); Hull v. Celanese Corp., 513 F.2nd 568, 572 (2nd Cir. 1975); cf. Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55. 77 L.Ed. 158 (1932): United States v. Arlen, 252 F.2nd 491 (2nd Cir. 1958). The question arises of whether or not the failure of the trial court to grant a continuance under the circumstances, coupled with the United States of America,s moving the petitioner to Savannah, knowing that the conditions therein would impermissibly violate the petitioners rights under the Sixth Amendment, knowing that his counsel was located in Miami, and petitioners Eighth Amendment Right to be free from crual and unusual punishment due to the condition's that existed in Chatham County Jail.

In Glasser v. United States, 315 U.S. 60, 76, 62 S.Ct. 457,467, 86 L.Ed. 680 (1942), the court noted that;

> "The right to have the assistance of counsel is to fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

In Coplon v. United States, 191 F2nd 749, (1951), the court held that;

> "We consider it equally true that a defendant and his lawyer have a right to talk together by telephone without their conversations being monitored by the prosecution through a secret mechanical device which they do not know is being used. It would not be an answer to say that the accused cannot complain of the interception of his telephone conversations with his counsel if he had on other occasions ample personal oppertunity to consult with his lawyer, face to face, with no person overheard. That fact would not erase the blot of unconstitutionality from the act of intercepting other consultations. (page 759)

it further states, (same page);

> "We think it is further true that the right to have the assistance of counsel is so fundamental and absolute that its denial invalidates the trial at which it occured and requires a verdict of guilty therein to be set aside, regardless of whether prejudice was shown to have resulted from the denial."

in the instant case there can be no doubt that the actions of Goverment to stigmatize the petitioner and counsel had a prejudical, pernicious effect, also, in United States v. Peters, 468 F.Supp. 364 (S,D, Fla. 1979), the court held that, "there was no requirement that defendants show that they were prejudiced."

In a recent case of the United States v. Morrison, 101 S.Ct. 665 (1981), the Supreme Court of the United States held that demonstrable prejudice or a substantial threat thereof must be shown before a violation of a person's Sixth Amendment rights to counsel is violated. In the case under consideration, the petitioner, after being arrested in Hawaii, on June 10th, 1980, was brought to Miami, Florida, to be arraigned on the Coptic's smuggling case. Under the circumstances, there existed no compelling reason that the petitioner be taken back and tried for the bond-jumping case in Savannah, Georgia, especially in light of the fact that the Coptic's case originally was scheduled to go to trial in December, which would have mandated that the petitioner's counsel, Arthur Tifford, for purposes of the Coptic's case, would have been totally geographically seperated from his client, and unable to prepare the Coptic's case; let alone the bond-jumping case in Savannah. Most mysteriously, after negotiations broke down

between the United States and the petitioners attorney, Arthur Tifford, at the beginning of November, concerning a plea to insure the petitioners cooperation in the Coptic's case, the Goverment chose to send the petitioner to Savannah, Georgia, to be tried on a far less important case, in spite of the fact that a multi-count indictment was then pending in Miami against the petitioner. Procunier v. Martinez, 416 U.S. 396, 40 L.Ed 2nd 224, 94 S.Ct. 1800, a Constitutional right of a prisoner is a reasonable oppertunity to seek and receive the assistance of attorneys; Dreher v. Sielaff 636 F.2nd 1141,An inmates oppertunity to confer with counsel is a particularly important Constitutional Right which the courts will not permit to be unnecessarily abridged (Ill. 1980).; Bach v. People of State of Ill., 504 F.2nd 1100, certiorari denied Bensinger v. Bach, 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed 2nd 1156, Contact by prisoner with an attorney, and the oppertunity to communicate privately, is a vital ingredient to

effective assistance of counsel and access to the courts.; In Bounds v. Smith, 52 L.Ed 2d 779, 97 S.Ct. 1491, (1977) the court stated,

> "That inmates must have a reasonable oppertunity to seek and receive the assistance of attorneys."

in issuing this decision it is noted that this Honorable Court relied upon its decisions in Younger v. Gilmore (1971) 404 US 15, 30 L.Ed2d 142, 92 S.Ct. 250, and in a number of subsequent decisions, including Cruz v. Beto (1972) 405 US 319, 31 L.Ed2d 263, 92 S.Ct. 1079, Wolff v. McDonnell (1974) 418 US 539, 41 L.Ed2d 935, 94 S.Ct. 2963, Cruz v. Hahck (1971) 404 US 59, 30 L.Ed2d 217, 92 S.Ct. 313. Cook v. Brockway 424 F.Supp. 1046, affirmed 559 F.2nd 1214, Prisoners have a right to free and unfettered communication with courts and attorneys. Taylor v. Sterett 532 F.2nd 462, (1976), Restrictions may not be placed on attorney-client relationship which effectively diminish prisoner's access to the courts.

It is submitted that the actions of the

Goverment, in conjunction with the United States District court in Savannah denying the Petitioner's motion to continue his bond-jumping case in Savannah, constitutes a prejudical abuse of discreation. In the case of the United States v. Uptain, 531 F2nd 1281, (C.A. 5th Ala. 1976), the appalate court articulated the factors that the reviewing courts will examine determining whether the motion for continuance was improperly denied. Specifically, the Court stated that the interval between arraignment and trial, the period of time that is available for the preparation of the case, the likehood of the prejudice from denial of the continuance, the Petitioner's role in shortening the effective preparation time, the degree of complexity in the case, and the availability of discovery from the prosecution, coupled with the unavailability of the Petitioners attorney, the experience of his attorney, and the pre-appointment or pre-retention experience of the particular attorney with the accused of the alleged

crime are all factors that should be taken into consideration in whether or not a continuance should be granted.

In Chandler v. Fretag, 348 US 3, 75 S.Ct. 1, 99 L.Ed. 4 (1954), the court said;

> "Defendant must be givin a reasonable oppertunity to employ and consult with counsel; otherwise the right to be heard by counsel would be of little worth."

In Linton v. Perini, 656 F.2nd 207 (1981) the court stated that;

> When a petitioners chosen counsal represents that he cannot meet a set trial date and requests a continuance, a trial court considering such a request must be sensitive to the defendants right to counsel of his choice, as well as the public's interest in prompt and efficant administration of justice. If the court finds that the delay is an attempt to manipulate a trial, or causes prejudice to the prosecution, or creates difficulties for the trial court, the trial court may interfere with the defendant's right to counsel of his own choice and require the case to proceed. On the other hand, where the request is REASONABLE, where there have been NO PRIOR ADJOURNMENTS, where the length of DELAY IS MODERATE, and where the adjournment seems to be for LIGITIMATE REASONS, the court should allow a REASONABLE ADJOURNMENT

> to permit a defendant to have retained counsel of his own choice. (page 209) (emphasis added)
>
> The court went on to point out that the right of choice of counsel is related to the right to ADEQUATE TIME TO PREPARE FOR TRIAL. (page 209, Supra)(emphasis added)

Harmless error tests are not relevant to the instant case. In Holloway v. Arkansas, 435 US 475, 98 S.Ct. 1173, 55 L.Ed2d 426 (1978), the court held that the Sixth Amendment's guarantee of the assistance of counsel is amoung those constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error. It said:

> "Moreover this court has concluded that the assistance of counsel is amoung those *constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error.* Chapman v. California, supra (386 US 18), at 23 (87 S.Ct. 824 at 827, 17 L.Ed2d 705). Accordingly, when a defendant is deprived of the presence or assistance of his attorney, either throughout the prosecution or during a critical stage in, at least, the prosecution of a capital offense, REVERSE IS AUTOMATIC. . . " Id. at 489, 98 S.Ct. at 1181. (emphasis added)

And in a slightly different contex in Beasley v. United States, 491 F.2d 687 (CA6 1974), the court held:

> ". . . Harmless error tests do not apply in regard to the deprivation of a procedural right so fundamental as the EFFECTIVE ASSISTANCE of counsel. . . " Id. at 696. (emphasis added)

In the recent case of United States v. King, 664 F.2d 1171 (November, 1981) the defendant was found to be deprived of his Sixth Amendment Right to effective assistance of counsel.

Concurrantly in KING, supra, and the instant case, the defendants had a possible five year prison term and although in KING the trial was admittedly more involved, due to a tax evasion matter vrsus a bond-jumping charge this was more than offset by KING having twenty-seven (27) days to prepare, vrsus, in all reality, two (2) days for the petitioner due to the fact that petitioner's counsel, Arthur Tifford was in trial continuously till December 13, 1980, with petitioners trial commencing on December 15, 1980.

In reversing the conviction in KING the court stated that:

"We conclude that adequate time for defense preparation is one of the rights afforded an accused under the Sixth Amendment and that King was unfairly deprived of this right as a result of the district court's denial of his motion for continuance. (page 1172)"

"It is now settled that the Sixth Amendment entitles a criminal defendant to more than mere legal representation; an accused has the right to the effective assistance of competent counsel. Powell v. Alabama, 287 US 45, 58, 53 S.Ct. 55, 60, 77 L.Ed. 158 (1932)

The asserted interferance with one's right to counsel will warrent reversal so long as it "had or threaten[ed] some adverse effect upon the effectiveness of counsel's representation. . . " United States v. Morrison, 449 US 361, 365, 101 S.Ct. 665, 668, 66 L.Ed.2d 564 (1981). (page 1173)

In closing, the court stated in the KING case:

"Although rulings on motions for continuance are traditionaly best left to the trial court's discretion, a judge is not imbued with the power to aborgate a criminal defendant's Constitutional Rights. Unger v. Sarafite, 376 US 575, 589, 84 S.Ct. 841, 849, 11 L.Ed2d 921 (1964).

"Myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." Id.

In the case under consideration, it is submitted that the time period of approxim-

ately thirty-eight (38) days between the time of the Petitioners arraignment in Savannah, Georgia, was totally inadequate to prepare a cognizable defense; the unavailability of the Petitioner to confer telephonically or in physical proximity to his attorney; the defenses that were crucial to the case, namely the defenses of duress/necessity and insanity were gratuitiously stigmitized; the barbaric conditions of incarceration, as witnessed by Petitioners weight loss of twenty-six (26) pounds; the unconstitutional restrictions placed upon the Petitioner in regards to effective legal research in the preparation of his case; the arbitrary and capricious deniel of a continuance to properly prepare the instant case, all served to coalesce in such a manner with the other errors that have been assigned in this case, to deprive the Petitioner of a fundamentally fair trial. Taylor v. Kentuckey, 436 US 478 (1978); Kentuckey v. Whorton, 99S.Ct. 2088 (1979).

CONCLUSION

A review of the record in combination with the law and arguements presented herein reveals that the conviction of the Petitioner is replete with reversable error that denied the Petitioner a fair trial.

While any of the points that have been proferred to this Court, by themselves, would be grounds for unjustifiable prejudice, it is submitted that the interaction of all of the grounds that have been set before this Honorable Court operated in such a way to deprive the Petitioner of a fundamentally fair trial.

For the foregoing reasons, the conviction of the Petitioner should be reversed.

Respectfully submitted,

TONY DARWIN - "Pro Se"
15801 South West 137th Avenue
Miami, Florida 33177
(305) 463-0149

BY _____
TONY DARWIN

Appendix

APPENDIX A

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

TONY DARWIN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondant.

A copy of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit was mailed February 11, 1982 to the below listed parties.

TONY DARWIN
15801 South West 137th Avenue
Miami, Florida 33177
(305) 463-0149

CLERK OF COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, N.E.
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ATLANTA, GEORGIA 30303

THREE COPIES

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 81-7010

UNITED STATES OF AMERICA,
Plaintiff
Appellee,

v.

ANTHONY DARWIN, A/K/A TONY,
Defendant
Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

(October 28, 1981)

Before GODBOLD, Chief Judge, TJOFLAT and VANCE, Circuit Judges.
PER CURIAM: AFFIRMED. See Circuit Rule 25.

U.S. District Court
Southern District of Geo.
Filed in office
10:19 AM
Dec. 15, 1981
M. Garrett
Deputy Clerk

A True Copy
Attested
Clerk, U.S. Court of
Appeal's Eleventh
Circuit.
BY s/
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Atlanta, Georgia.